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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BI46

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagics Resources in the Gulf of Mexico and
Atlantic Region; Amendment 31**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) and Gulf of Mexico Fishery Management Council (Gulf Council) (Councils) have submitted Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (Amendment 31) for review, approval, and implementation by NMFS. Amendment 31 would remove Atlantic migratory group cobia (Atlantic cobia) from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At the same time, NMFS would implement comparable regulations under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to replace the existing Magnuson-Stevens Act based regulations in Atlantic Federal

waters. The purpose of Amendment 31 is to facilitate improved coordination of Atlantic cobia in state and Federal waters, thereby more effectively constraining harvest and preventing overfishing and decreasing adverse socio-economic effects to fishermen.

DATES: Written comments on Amendment 31 must be received by *[insert date 60 days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: You may submit comments on Amendment 31, identified by "NOAA-NMFS-2018-0114," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0114 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be

posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies Amendment 31 may be obtained from the Southeast Regional Office Web site at <https://www.fisheries.noaa.gov/action/coastal-migratory-pelagics-amendment-31-management-atlantic-migratory-group-cobia>.

Amendment 31 includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires each regional fishery management council to submit FMPs or amendments to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

Background

Through the CMP FMP, cobia is managed in two distinct migratory groups. The Gulf migratory group of cobia ranges in the Gulf from Texas through Florida and in the Atlantic includes cobia off the east coast of Florida. Atlantic cobia is managed from Georgia through New York. The boundary between the two migratory groups is the Georgia-Florida state boundary. Both Gulf and Atlantic cobia were assessed through SEDAR 28 in 2013 and neither stock was determined to be overfished or experiencing overfishing.

The majority of Atlantic cobia landings occur in state waters and, despite closures in Federal water in recent years, recreational landings have exceeded the recreational annual catch limit (ACL) and the combined stock ACL. This has resulted in shortened fishing seasons, which have been ineffective at constraining harvest. Following overages of the recreational and combined stock ACLs in 2015 and 2016, Federal waters closures for recreational harvest occurred in both 2016 (June 20) and 2017 (January 24). Additionally, Federal waters were closed to commercial harvest of Atlantic cobia in 2016 (December 5) and 2017 (September 4), because the commercial ACL was projected to be reached during the fishing year.

Allowable harvest in state waters following the Federal closures varied by time and area. Georgia did not close state waters to recreational harvest of Atlantic cobia in 2016 or

2017. South Carolina allowed harvest in 2016 during May in the Southern Cobia Management Zone and closed state waters in 2017 when Federal waters closed. Most harvest of Atlantic cobia off Georgia and South Carolina occurs in Federal waters. Off North Carolina, recreational harvest of Atlantic cobia closed on September 30, 2016; in 2017, harvest was allowed May 1 through August 31. Off Virginia in 2016, harvest was allowed until August 30, 2016, and in 2017, Virginia allowed harvest June 1 through September 15. Harvest in state waters during the Federal closures contributed to the overage of the recreational ACL and the combined stock ACL.

The South Atlantic Council requested that the Atlantic States Marine Fisheries Commission (ASMFC) consider complementary management measures for Atlantic cobia, as constraining harvest in Federal waters has not prevented the recreational and combined ACLs from being exceeded. The ASMFC consists of 15 Atlantic coastal states that manage and conserve their shared coastal fishery resources. The majority of ASMFC's fisheries decision-making occurs through the Interstate Fisheries Management Program, where species management boards determine management strategies that the states implement through fishing regulations.

In May 2016, the ASMFC started developing an interstate FMP for Atlantic cobia with the purpose to improve cobia management

in the Atlantic. In April 2018, the ASMFC implemented their Interstate FMP, which established state management for Atlantic cobia. Each affected state developed an implementation plan that included regulations in their state waters. In addition, the ASMFC is currently amending the Interstate FMP for Atlantic cobia to establish a mechanism for recommending future management measures to NMFS. If Amendment 31 is implemented, such management recommendations would need to be implemented in Federal waters through the authority and process defined in the Atlantic Coastal Act.

The management measures contained within the ASMFC's Interstate FMP are consistent with the current Federal regulations for Atlantic cobia. For the recreational sector, the management measures in the Interstate FMP include a recreational bag and possession limit of one fish per person, not to exceed six fish per vessel per day, and a minimum size limit of 36 inches (91.4 cm), fork length. For the commercial sector, the management measures in the Interstate FMP include a commercial possession limit of two cobia per person, not to exceed six fish per vessel, and a minimum size limit of 33 inches (83.8 cm), fork length. Under the ASMFC plan, regulations in each state must match, or be more restrictive than, the Interstate FMP management measures. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive regulations for

the recreational sector in their state waters than specified in the Interstate FMP. Those regulations include recreational bag and vessel limits, and minimum size limits, in addition to allowable fishing seasons. The Interstate FMP also provides the opportunity for states to declare *de minimis* status for their Atlantic cobia recreational sector, if a state's recreational landings for 2 of the previous 3 years is less than 1 percent of the coastwide recreational landings for the same time period. States in a *de minimis* status would be required to adopt the regulations (including season) of the closest adjacent non-*de minimis* state or accept a one fish per vessel per day trip limit and a minimum size limit of 29 inches (73.7 cm), fork length. Maryland, Delaware, and New Jersey have declared a *de minimis* status.

The Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that requires conservation and management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management (50 CFR 600.305(c)(1)). Beyond such stocks, councils may determine that additional stocks require conservation and management. However, not every fishery requires Federal management and the NMFS National Standard Guidelines at 50 CFR

600.305(c) provide factors that NMFS and the councils should consider when considering removal of a stock from a FMP. This analysis is contained in Amendment 31.

Based on this analysis, the Councils and NMFS have determined that Atlantic cobia is no longer in need of conservation and management within the South Atlantic Council's jurisdiction and the stock is eligible for removal from the CMP FMP. The majority of Atlantic group cobia landings are in state waters and the stock is not overfished or undergoing overfishing. However, the CMP FMP has proven ineffective at resolving the primary ongoing user conflict between the recreational fishermen from different states, and it does not currently appear to be capable of promoting a more efficient utilization of the resource. Most significantly, the harvest of Atlantic cobia is adequately managed in state waters by the ASMFC and their Interstate FMP, which was implemented in April 2018. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive recreational regulations than those specified in the Interstate FMP. Furthermore, the Interstate FMP requires that if a state's average annual landings over the 3-year time period are greater than their annual harvest target, then that state must adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the

future years. For the commercial sector, the ASMFC's Interstate FMP specified management measures for Atlantic cobia that are consistent with the current ACL and AM specified in the Federal regulations implemented pursuant to the CMP FMP.

Therefore, NMFS and the Councils have determined that management of Atlantic cobia by the states, in conjunction with the ASMFC and Secretary of Commerce, will be more effective at constraining harvest and preventing overfishing; thereby, offering greater biological protection to the stock and decreasing adverse socioeconomic effects to fishermen. Further, management of Atlantic cobia by ASMFC is expected to promote a more equitable distribution of harvest of the species among the states.

Action Contained in Amendment 31

Amendment 31 would remove Atlantic cobia from Federal management under the Magnuson-Stevens Act. At the same time, NMFS would implement comparable regulations under the Atlantic Coastal Act to replace the existing Magnuson-Stevens Act based regulations in Federal waters.

Current commercial management measures for Atlantic cobia include a minimum size limit of 33 inches (83.8 cm), fork length and a commercial trip limit of two fish per person per day, not to exceed six fish per vessel per day. Federal regulations for recreational harvest of Atlantic cobia in Federal waters include

a minimum size limit of 36 inches (91.4 cm), fork length and a bag and possession of one fish per person per day, not to exceed six fish per vessel per day.

Under the authority of the Atlantic Coastal Act, NMFS would implement these same minimum size limits, recreational bag and possession limits, and commercial trip limits in Federal waters. Additionally, NMFS would implement regulations consistent with current CMP FMP regulations for the fishing year, general prohibitions, authorized gear, and landing fish intact provisions specific to Atlantic cobia.

The current Atlantic cobia commercial ACL is 50,000 lb (22,680 kg) and the recreational ACL is 620,000 lb (281,227 kg). The proposed removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act would remove these sector ACLs. Thus, NMFS would implement a commercial quota of 50,000 lb (22,280 kg) through the Atlantic Coastal Act consistent with the current commercial ACL. The current commercial accountability measure (AM) requires that if commercial landings reach or are projected to reach the ACL, then commercial harvest will be prohibited for the remainder of the fishing year. NMFS would implement commercial quota closure provisions to prohibit commercial harvest once the commercial quota is reached or projected to be reached.

The ASMFC's Interstate FMP has specified a recreational harvest limit (RHL) of 613,800 lb (278,415 kg) in state and Federal waters and state-by-state recreational quota shares (harvest targets) of the coastwide RHL. During the development of the Interstate FMP, one percent of the amount of the recreational allocation of the current Federal ACL (initially 6,200 lb (2,812 kg)) was set aside to account for harvests in *de minimis* states (Maryland, Delaware, New Jersey). The harvest targets for each state, in both state and Federal waters, are 58,311 lb (26,449 kg) for Georgia, 74,885 lb (33,967 kg) for South Carolina, 236,316 lb (107,191 kg) for North Carolina and 244,292 lb (110,809 kg) for Virginia. Percentage allocations are based on states' percentages of the coastwide historical landings in numbers of fish, derived as 50 percent of the 10-year average landings from 2006-2015 and 50 percent of the 5-year average landings from 2011-2015.

The proposed removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act would remove the recreational sector AM for Atlantic cobia. The recreational AM requires that both the recreational ACL and the stock ACL are exceeded in a fishing year then in the following fishing year, recreational landings will be monitored for a persistence in increased landings, and, if necessary, the recreational vessel limit will be reduced to no less than 2 fish per vessel to

ensure recreational landings achieve the recreational annual catch target, but do not exceed the recreational ACL in that fishing year. Additionally, if the reduction in the recreational vessel limit is determined to be insufficient to ensure that recreational landings will not exceed the recreational ACL, then the length of the recreational fishing season will also be reduced.

In place of the current recreational AM, state-defined regulations and seasons implemented consistent with the ASMFC's Interstate FMP are designed to keep harvest within the state harvest targets. If a state's average annual landings over the 3-year time period are greater than their annual harvest target, then the Interstate FMP requires the state to adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the future years.

If Amendment 31 is subsequently approved and implemented, Atlantic cobia would be managed under the ASMFC Interstate FMP in state waters and through Atlantic Coastal Act regulations in Federal waters. This will ensure that Atlantic cobia continues to be managed in Federal waters and that there would be no lapse in management of the stock. These regulations would be expected to be implemented concurrently with the removal of Atlantic cobia

from the CMP FMP and serve essentially the same function as the current CMP FMP based management measures.

Proposed Rule for Amendment 31

A proposed rule that would implement Amendment 31 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the CMP FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Councils have submitted Amendment 31 for Secretarial review, approval, and implementation. Comments on Amendment 31 must be received by *[insert date 60 days after date of publication in the **FEDERAL REGISTER**]*. Comments received during the respective comment periods, whether specifically directed to Amendment 31 or the proposed rule, will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 31. Comments received after the comment periods will not be considered by NMFS in this decision. All comments

received by NMFS on Amendment 31 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 2018.

Margo B. Schulze-Haugen
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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